IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8428 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIMJIBHAI CHAKUBHAI VAGHARI

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/02/2000

ORAL JUDGEMENT

#. Heard Mr.Yatin Soni, learned advocate for the petitioner. Leave granted to amend the petition as per the draft amendment tendered today. The petitioner to amend the petition forthwith.

Heard Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-7-1999 passed by respondent No. 2 - The Commissioner of Police, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that the petitioner was involved in four criminal cases registered at Bhakatinagar Police Station vide C.R. No : 347 dated 9-9-98 and C.R. No : 3/99 dated 8-1-99. The petitioner was also involved in a criminal case registered at Rajkot City "A" Division Police Station vide C.R. No : 105/99 dated 14-3-99 and at Rajkot Taluka Police Station vide C.R. No : 404/99 dated 27-6-99. That in all four cases, it is alleged that the petitioner is a habitual thief and has been involved in cases to cause house trespass, committing theft and involved into offence made punishable under Section 504 and 506(2) of IPC. Over and above that two witnesses on assurance of their anonymity have given statement dated 5-7-1999 against the anti social activities of the petitioner and have narrated the alleged incidents dated 14-4-1999 and 2-4-1999 respectively. That on the basis of the said material, the respondent No.2 has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner forthwith from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in registered cases though available under Section 437(5) of the CrPC . The learned advocate for the petitioner has submitted that the petitioner was enlarged on bail in all four registered cases on 20-9-99,

9-1-1999, 5-3-1999 and 29-6-1999 respectively. However, before passing the order, the detaining authority has failed to consider claiming of cancellation of bail in any of the cases pending for trial in the Court and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has observed in para 8 of the grounds of detention that the petitioner having got himself released on bail is likely to continue his prejudicial activities which may disturb the public order and as such, to prevent the petitioner forthwith, the detention order is necessary. That there is nothing stated in the grounds of detention from which it could reasonably inferred that the detaining authority has ever considered the aspect of claiming of cancellation of bail in any of the pending cases against the petitioner as available under Section 437(5) of CrPC and as such, on account of the said non application of mind, it is difficult to sustain the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-7-99 passed by respondent No. 2 - The Commissioner of Police, Rajkot against the petitioner is hereby quashed and set aside. The petitioner - BHIMJIBHAI CHAKUBHAI VAGHARI is

ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made

absolute.

Date : 28-2-2000 [A.K.Trivedi, J.]

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